

RECEIVED

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

MAR 10 2003

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

|                                        |   |                             |
|----------------------------------------|---|-----------------------------|
| In the Matter of                       | ) |                             |
|                                        | ) |                             |
| Amendment of Section 73.622(b)         | ) | <b>MM Docket No. 00-138</b> |
| Table of Allotments                    | ) | RM-9896                     |
| Digital Television Broadcast Stations. | ) |                             |
| (Boca Raton, Florida)                  | ) |                             |

To: Chief, Video Division  
 Media Bureau

**REPLY**

1. Sherjan Broadcasting Co., Inc. ("Sherjan") tiled a petition for further reconsideration ("Pctition") in the above-captioned proceeding on December **24**, 2002. Guenter Marksteiner ("Marksteiner") filed an Opposition on February 26, 2003. This is Shejan's Reply to Marksteiner's Opposition.

2. Sherjan requested reconsideration on the ground that while the *Report and Order* properly relied on the more accurate results achieved by analyzing geographic cells smaller than two kilometers to determine whether prohibited interference would be caused to WJAN-CA, it did not carry the analysis far enough, because only selected cell sizes were examined, and out-of-date population information was used. In effect, the Media Bureau ("Bureau") mixed apples and oranges, departing from what might be considered a "default" Longley-Rice analysis, but on an artificially selective basis.

3. Marksteiner complains that Sherjan's more accurate information comes too late, in a second petition for reconsideration. Marksteiner further argues that the full Commission previously

decided to rely on 1990 census data, thereby precluding the Bureau from considering the year 2000 census data offered by Sherjan. Marksteiner is wrong on both counts.

4. The issue of asking for a second reconsideration could easily have been avoided by Sherjan by filing an application for review by the full Commission – a procedural step that Sherjan was fully entitled to take.<sup>1</sup> However, as noted in the Petition, the Commission normally does not review information on which the Bureau has not had an opportunity to pass.<sup>2</sup> That is why Shejan filed a second petition for reconsideration. If the Staff decides not to entertain the Petition, Sherjan can simply proceed to request review by the ~~full~~ Commission.

5. As to reliance on 2000 census data, Marksteiner is incorrect in stating that the full Commission previously decided that all decisions would be based on only 1990 census data. The full language from Paragraph 72 of FCC 01-24, cited by Marksteiner at page 4 of his Opposition, is as follows:

At this time, we have not made plans to convert our processing analysis to use new census data. As discussed above in addressing other suggested changes to the computer program used for application processing, using new census data would necessitate re-evaluation of the entire DTV table to establish “baseline” values against which application proposals can be measured. Again as above, additional information about population shifts can be submitted with an application where such information is crucial and decisional. Also, if, in the future, we consider using new census data, we can consider then the AFCCE recommendation concerning the use of the geographic center of each cell.

It is very clear from the above language that while the Commission did decide to stick with 1990 census data, to have a stable base of information while creating the initial DTV table of allotments, it also explicitly left the door open to the submission of “additional information about population

---

<sup>1</sup> See Section 1.115(a) of the Commission’s Rules.

<sup>2</sup> See Section 1.115(c) of the Commission’s Rules

shifts....where such information is crucial and decisional.” There is no doubt that updated population data is decisional here, so Sherjan’s submission, and the Commission’s consideration, of additional information are fully justified in this specific, individual proceeding.<sup>3</sup>

6. Finally, Marksteiner does not rebut Shejan’s showing that if a regression analysis is performed to smooth out the data, interference to WJAN-CA would be below 0.5% using none of the 14 cell sizes under consideration. In light of the fact that all data include some anomalies, it makes no sense not to smooth out the data, where the very purpose of the exercise is to make an intelligent prediction of the likelihood of interference.

7. Sherjan once again respectfully submits that if the Bureau is prepared to accept application of the Longley-Rice method to smaller cell sizes to increase accuracy, then the Bureau must do what is reasonable to achieve the professed goal of accuracy, including basing the analysis on the most recent available population data and using a smooth curve reflecting data over several cell sizes smaller than the default 2.0 **km** standard. The results of such an analysis mandate that the Bureau

---

<sup>3</sup> While the language in par. 72 refers to submission of additional information in an “application,” there is no indication that WPPB-TV plans to submit an application for a DTV construction permit that specifies different facilities from its proposal in the rule making or that WPPB-TV agrees to tailor the facilities for which it ultimately seeks a construction permit so that they do not cause prohibited interference to WJAN-CA.

find that the Channel \*40 DTV allotment at Boca Raton is predicted to cause prohibited interference to WJAN-CA and that the allotment be rescinded

1730 Rhode Island Ave., N.W., Suite 200  
Washington, DC 20036-3101  
Tel. 202-728-0400  
Fax 202-728-0354

Respectfully submitted,



Peter Tannenwald  
Gregory V. Haledjian<sup>4</sup>

March 10, 2003

Counsel for Sherjan  
Broadcasting Co., Inc.

**CERTIFICATE OF SERVICE**

I, Daniella K. Mattioli Knight, do hereby certify that I have, this 10<sup>th</sup> day of March, 2003, caused a copy the foregoing "Reply" to be sent by first class United States mail, postage repaid, to the following:

Anne Goodwin Crump, Esq.  
Fletcher, Heald & Hildreth, P.L.C  
1300 N. 17<sup>th</sup> St. – 11<sup>th</sup> Floor  
Rosslyn, VA 22209-3801  
Counsel for Guenter Marksteiner

Paul H. Brown, Esq.  
Wood, Maines & Brown  
1827 Jefferson Place, N.W.  
Washington, DC 20036  
Counsel for the School Board of Broward County



Daniella K. Mattioli Knight

<sup>4</sup> Admitted in Maryland; not admitted in D.C.